from his costs should be made, or that he should pay a part of the Collector's costs, the Court may at its discretion make such order as to costs as it may think fit.

In the exercise of my discretion I therefore award the objectors the costs of these proceedings. To sum up, therefore, I make the following orders:

(1) in respect of such of the awards made by the Collector which were accepted by the objectors and not referred to court, they are hereby affirmed;
(2) for the loss of the acquired land, the Collector's award of $322,272 is increased by 20% to $383,503.96;
(3) for severance and injurious affection, as follows:
  (a) loss of crops to make way for new drains and pond and to make way for an alternative road — nil
  (b) cost of new drains — $27,200
  (c) in default of a legally enforceable undertaking in writing by the state government of Penang as aforesaid in terms to be approved by this court, there shall be in favour of the objectors and their successors in title a declaration as to entitlement to reimbursement of all expenses reasonably incurred and properly substantiated for the maintenance (including dredging) of the branch drains concerned so as to ensure a smooth flow of water and waste in the main drains and thus preventing any flooding and damage to crops on the remaining unacquired lands of Bertam Estate. Such expenses shall be recoverable as a debt due and payable and in the event of there being any dispute as regards such claims, then the parties shall be at liberty to apply to court. For the avoidance of doubt, in the event of the said undertaking being given during the pendency of the appeal from this judgment, then the award of $27,200 for the cost of new drains cannot stand and must be rescinded for otherwise there would be double counting
  (d) cost of new fencing for the manager's bungalow — $ 4,700
  (e) cost of new fencing for the rest of the estate; 640 chains of barbed wire fencing on timber posts at $21.45 per chain — $13,728
  (f) cost of alternative road — nil
(4) interest at the rate of 8% pa on the sum awarded which is in excess of that awarded by the Collector at the inquiry for the period from the date of possession being taken of the acquired land, namely, 21 February 1980 to the date of payment;
(5) reimbursement of premia paid by the objectors for insurance for fire hazard, wind storm, personal accident/hospitalization, maintenance for weeding and rat bait/root disease and road licensing of estate vehicle; — nil
(6) refund of deposit paid by objectors; — $ 1,000
(7) reimbursement of fees paid to valuer and engineer always provided they have been reasonably incurred and properly substantiated;
(8) costs of these proceedings.

Order accordingly.

Solicitors: *Presgrave & Matthews.*

Reported by *Wong Kim Fatt*

Margaret Thavamoney Chellappah v United Asian Bank Bhd (Dr C Jeremiah & Anor, Third Parties)

HIGH COURT (SEREMBAN) – CIVIL SUIT NO 292 OF 1983
MUSTAPHA HUSSAIN J
31 MARCH 1989

Contract – Purchase of property – Property charged to defendant bank as security for the loan and overdraft accounts of third party – Dispute as to whether defendant bank agreed to discharge property at $93,500 – Question of fact

The plaintiff is the daughter of the third party. She had agreed to purchase a property known as No 1 Hose Road, Seremban, CT 2615, lot 334, township of Seremban, from her mother, the second third party. The said property was mortgaged to the defendant bank. On or about 4 June 1979 the plaintiff's father, the first third party, and the plaintiff went to the Kuala Pilah branch of the defendant bank and saw the manager of the branch, one Mr Palakrishnan, who was informed of the purchase and who told the plaintiff that the property was charged as security for the first third party's loan and overdraft accounts. The amount the first third party was owing the bank then was $93,500 and Mr Palakrishnan agreed that the property would be discharged on full satisfaction of the debt.

It was agreed that the plaintiff, who stayed in Dubai, would remit a sum of $3,500 periodically to the bank towards the repayment of the loan. She was advised by the bank manager to open an account with the bank to facilitate the periodic remittance from her in Dubai to be credited. She told the manager that no further advances were to be given to the first third party, the plaintiff's father, and that all her remittances

were to be transferred to her father's loan account. By the end of July 1981, the plaintiff had remitted and completed the payment of $93,500 to the bank. However, the property was not discharged as the first third party had taken further advances totalling $78,000 and only on payment of this outstanding debt, will the defendant bank discharge the property.

The sole issue in this case is whether the manager of the defendant bank was told and had agreed that no further advances would be given to the plaintiff's father (the first third party) which is purely a question of fact. The then manager of the defendant bank in his evidence said that there was no such thing and he never agreed at all.

Held:

(1) It is the finding of the court based on the testimony of the witnesses and the perusal of the accounts that the plaintiff was telling the truth. The former manager of the defendant bank was at fault in allowing further advances to be drawn by the plaintiff's father (first third party) on his house loan account in contravention of the plaintiff's instructions not to allow any further advances.

(2) All the evidence show the plaintiff is telling the truth. She made it clear to Mr Palakrishnan that no further advances were to be given to her father and that when the $93,500 loan had been settled, the charge on the said property would be discharged and the property transferred to the plaintiff. The plaintiff has, on more than a balance of probability, proved her case. There shall therefore be judgment for the plaintiff in terms of all the prayers in the statement of claim. Since there is no defence filed by the third parties, there is nothing to stop the defendant bank from getting full indemnity from the first third party.

[*Editorial Note*: The defendant has appealed to the Supreme Court vide Civil Appeal No 02/168 of 1989.]

DA Devadason for the plaintiff.
Pretam Singh for the defendant.

Cur Adv Vult

Mustapha Hussain J: The plaintiff here is the daughter of the third parties. She had agreed to purchase a property known as No 1 Hose Road, Seremban CT 2615 lot 334 township of Seremban from her mother the second third party.

Two documents were drawn up and signed by the parties. This was on 4 June 1979. At that time, the said property was mortgaged to the defendant bank. On or about 4 June 1979 the plaintiff's father, the first third party, and the plaintiff went to the Kuala Pilah branch of the defendant bank and saw the manager Mr Palakrishnan (DW2) ('Mr Pala'). Mr Pala was informed of the purchase and Mr Pala told the plaintiff that the property was charged as security for the first third party's loan and overdraft accounts. The amount the first third party was owing the bank then was $93,500 and Mr Pala agreed that the property would be discharged on full satisfaction of the debt.

The plaintiff was staying in Dubai where her husband worked and it was agreed that she would remit a sum of $3,500 periodically to the bank towards the repayment of the loan. She was advised by Mr Pala the bank manager to open an account with the bank to facilitate the periodical remittance from the plaintiff in Dubai to be credited. According to the plaintiff, she told the manager Mr Pala that no further advances were to be given to the first third party, the plaintiff 's father and that all her remittances were to be transferred to her father's (first third party's) loan account No 29-11-76. The plaintiff's father, the first third party, operated another overdraft account with the same branch.

By the end of July 1981, the plaintiff had remitted and completed the payment of $93,500 to the bank, and the plaintiff's father (the first third party) wrote to the plaintiff a letter dated 13 July 1981 that the plaintiff had completed the payment of the house loan and the defendant bank will be transferring the property to the plaintiff.

However, the property was not discharged as the first third party had taken further advances totalling $78,000 and only on payment of this outstanding debt, will the defendant bank discharge the property.

The sole issue in this case is whether the manager of the defendant bank was told and had agreed that no further advances would be given to the plaintiff's father, the first third party, way back in June 1979. It is purely a question of fact to be adduced from the testimony of witnesses and the documents produced in the agreed bundle.

The plaintiff and her husband gave evidence to the effect that the manager of the defendant bank Mr Pala (DW2) had been told in no uncertain terms that no further advances were to be given to the plaintiff's father (first third party) on his loan account and that on completion of the payments (by periodical remittances from Dubai) towards the settlement of $93,500, the property will be discharged.

On the other hand, Mr Pala (DW2), the then manager of the defendant bank, in his evidence said that there was no such thing and he never agreed at all. DW2 further said the remittances from the plaintiff were for helping the father to educate the plaintiff's brothers who were doing medicine in India.

If as contended by the former manager of the defendant bank (Mr Pala, DW2) that the periodical remittances by the plaintiff from Dubai were for helping her father (first third party) to educate her own brothers studying medicine in India, why should then the plaintiff be asked to open a separate account? Surely a direct remittance to her father would suffice.

Instead of paying all the remittances from the plaintiff into the father's (first third party's) house loan account, there were payments made into the father's other account, ie the overdraft account. It is the finding of this court based on the testimony of the witnesses and

the perusal of the accounts that the plaintiff was telling the truth. The former manager of the defendant bank (DW2) was at fault in allowing further advances to be drawn by the plaintiff's father (first third party) on his house loan account in contravention of the plaintiff's instructions not to allow any further advances. The defendant bank's former manager's (DW2) cavalier attitude can be gauged from the fact of his own admission that when the plaintiff and her husband came to see him after making an appointment, the plaintiff and her husband were made to wait for about half an hour and even after they had entered his office, he was more concerned with the telephone calls he was making to his friends for playing golf, in spite of the fact that the plaintiff and her husband had come all the way from Dubai (in the Middle East) to discuss an important subject for which they had paid such a large sum of money, about $95,000 or more.

Then again, there was evidence, some time in July, in DW2's office, the transfer form was signed in the presence of DW2, which Mr Pala (DW2) agreed but over his objection.

All this evidence and there are many more, show the plaintiff is telling the truth. That is, she made it clear to Mr Pala (DW2) that no further advances are to be given to the plaintiff's father (first third party) and that when the $93,500 loan had been settled, the charge on the said property will be discharged and the property transferred to the plaintiff.

The plaintiff has, on more than a balance of probability, proved her case. There shall therefore be judgment for the plaintiff in terms of all the prayers in the statement of claim.

Since there is no defence filed by the third parties, there is nothing to stop the defendant bank from getting full indemnity from the first third party.

Order accordingly.

Solicitors: *Devadason & Devadason*; *Muthu & Partners.*

Reported by *Wong Kim Fatt*